

Message Text

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ACTION ARA-17

INFO OCT-01 ADP-00 CIAE-00 DODE-00 PM-09 H-02 INR-10 L-03

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FM AMCONSUL NASSAU

TO SECSTATE WASHDC 4151

C O N F I D E N T I A L NASSAU 470

E. O. 11652 GDS

TAGS: EFIS, BF, US

SUBJ: GOBI VIOLATION OF INTERNATIONAL CONVENTION IN

SEIZURE OF U. S. FISHING VESSELS

REF: (A) NASSAU A-82; (B) NASSAU 1103, 10/26/72

1. THE DEPARTMENT WILL RECALL THAT IN REF. B THE CONSULATE GENERAL PROPOSED PROTESTING THE SEIZURE OF U. S. FISHING VESSELS IN VIOLATION OF ARTICLE 23 OF THE 1958 GENEVA CONVENTION ON THE HIGH SEAS BECAUSE THE PURSUIT OF THESE VESSELS HAD BEEN INTERRUPTED. IT WAS DECIDED NOT TO DO THIS AT THAT TIME BECAUSE THE PROTEST WOULD REVEAL THE ARGUMENTS TO BE USED BY THE DEFENSE IN THE TRIAL.

2. THE QUESTION OF HOT PURSUIT WAS NOT ADDRESSED IN THE JUDGMENT AT THE ORIGINAL TRIAL (SEE PARA 8, NASSAU 1150 OF 11/3/72). HOWEVER, IN THE APPEALS COURT DECISION (TRANSMITTED BY REF. A) IT WAS STATED (P. 13) THAT QTE SEIZURE OF VESSELS IN INTERNATIONAL WATERS MAY WELL BE A BREACH OF INTERNATIONAL LAW UNQTE BUT THAT MUNICIPAL LAW NEVERTHELESS CONFERRED JURISDICTION ON THE BAHAMIAN COURT. THE COURT ADDED THAT QTE IT APPEARS THAT A SIMILAR RULE APPLIES IN INTERNATIONAL LAW... AND THAT THE REMEDY FOR THE BREACH OF INTERNATIONAL LAW IS AT THE DIPLOMATIC LEVEL. UNQTE

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3. THIS JUDGMENT RAISES TWO QUESTIONS:

A. THE CITATIONS SUPPORTING THIS POSITION-- R. V. HUGHES (1879)4 Q B D 614; GREEN: INTERNATIONAL LAW THROUGH THE CASES, THIRD EDITION P. 416; AND KEN VS. ILLINOIS (1886) 19 U. S. 436 -- ALL SEEM TO BE VERY OLD CASES AND WE WONDER WHETHER THEY REFLECT CURRENT INTERNATIONAL PRACTICE.

B. MORE SERIOUSLY, THE CONSULATE GENERAL NOTES THAT THE APPEALS COURT' S DECISION APPEARS TO FREE GOBI COURTS AND OFFICIALS FROM ANY RESPONSIBILITY TO OBSERVE INTERNATIONAL LAW IN DEALING WITH U. S. FISHING VESSELS. WE DO NOT BELIEVE THIS SHOULD GO UNCHALLENGED AND PROPOSE THAT REPRESENTATIONS SHOULD BE MADE TO THE MINISTRY OF EXTERNAL AFFAIRS ON THIS POINT.

4. THE POST WOULD APPRECIATE RECEIVING THE DEPARTMENT' S VIEWS ON THIS MATTER.

SPEAR

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*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

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